

## **REMARKS**

Claims 13-18 and 31 are in this application with claims 13 and 31 amended herein. No new matter is added by this amendment.

Initially, Examiner Cohen is thanked for agreeing to and conducting the very productive interview with the undersigned and the inventor on October 17, 2007. The amendments herein directly relate to that discussion, and are an attempt to address the potential avenues discussed in that interview to distinguish over the cited reference.

In the office action, claims 13-18 and 31 are rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,237,243 to Cook.

Claims 13 and 31 are amended herein to clarify the distinguishing features of the present invention. Initially, claim 31, as amended recites, “said first and second set of marks both beginning at a common starting point at an end of the tape.” (Claim 13 recites similar features.) This amendment is made to clarify that unlike Cook, where the appliqué is shown as applied at some distance along the length of the tape and thus the inches scale and the scaled markings do not begin at the same point, according to the present invention, the marks indicating either inches or the scaled number of feet, both begin at a common starting point, which during the interview was also called the zero-zero point. The specification supports this amendment, particularly in paragraph 17, where “starting point” is described as elements 28a and 28b of Fig. 1, and there is also disclosed in that paragraph that they may begin at the “end” 28 of the tape. It is submitted that the starting point being at the end of the tape is simply another way of stating that both the scaled markings and the inches scale, being at the same zero-zero point, as shown in Fig. 1.

As used in the specification, the term “end” is not a generalization referring to an approximate location and the term should not be given that broad interpretation in considering these claims. The Examiner is reminded that the applicant may be his own lexicographer and when, as here he has specifically defined a term in the specification, that definition of the term should be used, and not the broader general meaning of the term. The term “end” as shown in Fig. 1, and described in the specification, specifically with reference to the starting point 28a, 28b refers to the actual termination point of the tape, from which point the markings for the inches scale and the scaled ratio markings begin.

It is submitted that Cook does not teach such an arrangement. Initially, Cook teaches an appliqué, thus it must be attached to the back side of the tape, and to align the starting points of the scaled markings with that of the inch scale would be very difficult. Secondly, all tape measures, including that of Cook include a riveted tab at the end of the tape. The riveting of this tab would prevent effective application of the appliqué at that end of the tape, and thus would not result in the alignment of the inch scale and the scaled ratio markings beginning at the same point. Accordingly, it is submitted that Cook does not teach such an arrangement of the markings of the tape of the present invention.

Another distinction of the present invention is that the scaled markings and the inch markings, which being at the end of the tape, ascend numerically away from the end of the tape. This distinguishes from the Cook reference, and most architects rules where scaled markings tend to go in different directions along the tape or ruler. The effect of this is that to use the tape of Cook a user will often have to turn the tape over, and begin measuring from some other point on the tape, not the end with the tab that is commonly used for measurement with a tape measure. In contrast, by having the markings for the scaled ratios begin at the end of the tape

and ascend numerically away from the end, the user can utilize the device exactly the same way as one traditionally uses a tape measure.

Further, by use of an appliqué, as taught by Cook, the reference actually teaches away from having the markings start at the same end point. Although as taught by Cook the appliqué can be placed at any point along the length of the tape, by having the scaled markings run in two different directions, that is both ascending from and ascending towards the end tab, there is actually no benefit to the user in placing the appliqué so that one of the scales coincides with the end of the tape. This is because that the other scale ratios, when used would require the tape to be turned over and any benefit derived from the placement of the appliqué for the first scale ratio markings is eliminated with respect to the second, since it doesn't begin at that end point but somewhere else along the tape. Thus the user would be inclined to place the appliqué at some distance along the tape to prevent unnecessary damage to the appliqué, and ease the ability to use the markings that run in both directions there along.

Still further, as recited in the instant claims 13 and 31, recite “numerals shown next to each mark denoting the number of feet at the distance of each mark with respect to the first scaling ratio.” As was brought out at the interview, the scales used in the Cook reference are very confusing to use and read, and do not allow for easy use. In contrast, as shown in Fig. 4B, the scaled markings of the present invention include numbers located at each mark denoting a scaled distance of the number of feet at that mark. Cook does not teach marking each foot indicator, but rather appears at best to mark each second or third marking, which adds to the confusion.

Finally, two new claims are added by this amendment which further distinguish over Cook. The appliqué of Cook is shown and described as being substantially shorter than the overall length of the tape (Col. 4 lines 20-27). As a result, may plan measurements at the scaled ratio may induce imprecision by not enabling a user to make a single measurement, but rather be forced to move the scaled portion of the tape several times to make one long measurement. This problem is eliminated by having the scaled markings extend the entire length of the tape, or to a position of 500 feet as recited in the new claims. Accordingly, it is submitted that new claims 32 and 33 distinguish over the Cook.

For at least these reasons, it is submitted that independent claims 13 and 31 patentably distinguish over Cook and are allowable. Claims 14-19 and 32-33 which depend from claim 13 are allowable therewith.

### **Conclusion**

In view of the remarks set forth above, this application is in condition for allowance which action is respectfully requested. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper, including any necessary extension fees, may be charged on Deposit Account 50-1290.

Respectfully submitted,

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